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OFFICE OF PETITIONS

In re Application	:	
Gentz, et al.	:	
Application No. 09/935,727	:	DECISION ON PATENT TERM
Filed: August 24, 2001	:	ADJUSTMENT
Attorney Docket No. PF454P2	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed December 11, 2006, requesting correction of the initial determination of patent term adjustment (PTA) from one hundred seventy-six (176) days to three hundred twenty-seven (327) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **three hundred twenty-seven (327) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On September 15, 2006, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date is one hundred seventy-six (176) days. On December 11, 2006, Applicants timely¹ submitted the instant application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is three hundred twenty-seven (327) days.

Applicants assert entitlement to a patent term adjustment of three hundred twenty-seven (327) days on the basis that the PTO improperly assessed Applicants a delay of one hundred fifty-one (151) days for filing an Information Disclosure Statement (IDS) on May 16, 2003, after Applicants had filed a response on December 16, 2002.

Applicants state that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of one hundred seventy-six (176) days based on an adjustment for PTO delay of twelve (12) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), one hundred four (104), two hundred eighty-seven (287), and twelve (12) days pursuant to 35 U.S.C. 154(b)(1)(A)(ii) and 37 C.F.R. § 1.703(a)(2), reduced by Applicants' delays of one hundred fifty-one (151) days pursuant to 35 U.S.C. 154(b)(2)(C)(i) and 37 C.F.R. § 1.704(c)(8) and eighty-eight (88) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b). The adjustment of 151 days is at issue.

A review of the application file reveals that the IDS filed on May 16, 2003, contained a transmittal letter, stating that it was being filed in response to a request from the Examiner. The record shows that the IDS is a copy of the IDS previously filed on December 16, 2002. In particular, applicants have included a copy of a postcard receipt, containing a USPTO date-stamp of December 16, 2002, and itemizing an IDS.

In view of the above, it is concluded that no applicant delay should have been assessed.

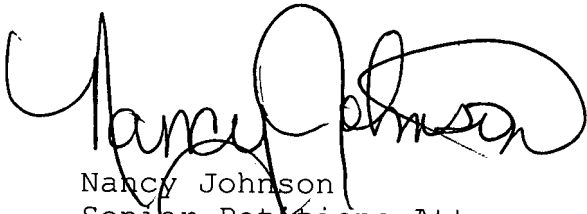
¹ Applicants filed the application for patent term adjustment together with the payment of the issue fee.

Accordingly, the correct determination of PTA at the time of mailing of the Notice of Allowance is **three hundred twenty-seven (327) days** (415 days of PTO delay and 88 days of applicant delay).

Receipt of the \$200 fee is acknowledged.

The application file is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enc: updated PAIR screen (2 pages)